IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1508 of 1997
in
SPECIAL CIVIL APPLICATION No 808 of 1985
with
CIVIL APPLICATION No 11274 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

A V BABARIYA

Appearance:

1. LETTERS PATENT APPEAL No. 1508 of 1997
MR HD DAVE AGP for Appellant No.
MR UTPAL M PANCHAL for Respondent No. 1 (absent)

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Appellant-State of Gujarat has challenged in this appeal, the judgment and order dated 9.5.1997 passed by the learned Single Judge of this court (Coram : S.K.Keshote, J.) allowing Special Civil Application No.808/85 filed by the original petitioner-present respondent herein.

Having heard learned AGP, Mr.Dave and having carefully gone through the judgment and order passed by the learned Single Judge it clearly appears that the averments made by the respondent-petitioner in his petition remained uncontroverted as though duly served, the other side had not preferred to file any counter to it. In the petition it was specifically contended by the original petitioner that no adverse remarks were ever communicated to him and considering those so-called adverse remarks, the petitioner was not considered for promotion in 1966, whereas, two other persons Mr.D.G.Patel and Mr.A.D.Patel appointed along with him were placed at Sr.No.258 and 259 respectively in the seniority list (Annexure-A) to the petition, but the petitioner was not considered for the promotion. Under the circumstances, in our considered opinion, the learned Single Judge was right in holding that the supersession of petitioner in 1966 in the matter of promotion to the higher post of Gujarat Agricultural Services Class II was unjust and illegal.

However, Mr.Dave submitted that as per the resolution of 1963 (Annexure-C) there was no need for the State Government to communicate adverse remarks. He submitted that the competent authority had to consider the case of individual with the adverse remarks entered into the service book of the concerned person. Accordingly, considering the remarks made against the petitioner in his service book, his case was not considered for promotion in 1966 and when he was found fit for promotion in 1971 after a period of 5 years he was duly promoted. He, therefore, submitted that the learned Single Judge was wrong in allowing the petition of the respondent-original petitioner on the ground that without considering the adverse remarks the petitioner was wrongly denied the promotion in 1966. We do not find any force in the submission made by Mr.Dave, learned AGP,

appearing for the State of Gujarat. The principles of natural justice would come in play in the instant case. Nobody can be denied promotion on such so-called uncommunicated adverse remarks. If an opportunity was given to the petitioner by pointing out to him the adverse remarks made against him in his service book, then he would have certainly made a representation and if the concerned authority was satisfied with his representation, then such remarks might have been expunged. In that view of the matter he would have been definitely eligible for being considered for promotion to the higher post. Admittedly, no such procedure was done, therefore, in our considered opinion, the learned Single Judge was absolutely right in allowing the petition of the respondent-petitioner.

In view of the above discussion, this appeal fails and is hereby dismissed. However, there shall be no order as to costs.

At this stage, it was brought to our notice that on Civil Application No.11274/97 filed in this appeal, Division Bench of this court stayed the execution and operation of the order passed by the learned Single Judge allowing the writ petition of the respondent-original petitioner. The same is, therefore, vacated forthwith.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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